IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

Ins.APP.No. 40 of 2005()

IC.31/2001 of E.I.COURT, KOLLAM
.....

APPELLANT-OPP. PARTY

THE REGIONAL DIRECTOR,
E.S.I. CORPORATION, THRISSUR.

BY ADV. SMT.T.D.RAJALAKSHMY, SC, ESI CORPN.

RESPONDENTS:

G.G.HOSPITAL, MURINJAPALAM,
MEDICAL COLLEGE POST, THIRUVANANTHAPURAM,
REPRESENTED BY THE CHIEF MEDICAL OFFICER,
DR.G.VELAYUDHAN.

BY

THIS INSURANCE APPEALS HAVING COME UP FOR ADMISSION ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

INS.APPEAL NO. 40 OF 2005

Dated 20th February 2007

J U D G M E N T

E.S.I Corporation, the respondent in I.C.31/01, is challenging the order passed by Employees' Insurance Court, Kollam upholding the contentions raised by respondent that the canteen run by respondent hospital is not covered under Section 2(12) of Employees State Insurance Act and hence respondent is not liable to comply with the provisions of the Act.

2. Learned counsel appearing for appellant was heard.

3. Hospital of respondent is at Thiruvananthapuram. 160 employees were working in the hospital apart from 60 doctors. Hospital is running a canteen within the same premises to provide boarding facilities to the staff, inpatients and employees of hospital. According to respondent it is part and parcel of the hospital and is not a separate unit and canteen does not employ more than ten employees and therefore

does not attract coverage provided under Section 2 (12) of Employees State Insurance Act. Appellant opposed the application contending that wage register produced to Insurance Inspector shows that ten employees have been employed for wages. Insurance Inspector inspected canteen in July 2001 and reported that electrically operated devices like Grinder and Fridge are installed in the canteen. It was contended that canteen is qualified for coverage as a factory under Section 2 (12) of the Act.

4. Insurance Court on evaluating the materials placed before it, including Ext.B1 report filed by RW1 found that evidence of RW1 establish that she did not make head count of employees of the canteen and workers of the canteen are last grade workers of the hospital and wages are also paid from the hospital and there are no separate account maintained by the canteen. It was also found that though Fridge and Grinder are installed in the canteen, electric supply was from the hospital and canteen was not run as separate unit. In such circumstances, Insurance court held that canteen does not attract coverage as provided under Section 2 (12) of the Act.

5. Argument of learned counsel appearing for

appellant relying on the decisions of Apex court in **RITZ Private Limited & others v. Shivaraman & another (1993 (4) SCC 364) and Christian Medical College v. Employees' State Insurance Corporation (2001 (1) SCC 256)** are that though canteen is part of hospital, it is being separately maintained as a unit and satisfies the definition of factory as provided under Section 2 (12) of Factories Act and therefore the impugned order is unsustainable. Facts of the cases relied on by learned counsel are entirely different. In both the cases, on the evidence it was found that more than ten persons were employed in that unit which were separately functioning. The decisions are not applicable to the facts of this case.

6. Insurance court on the evidence found that canteen was not run as separate unit but was being run as part of hospital. It was also found that employees of canteen are last grade employees of hospital and RW1 who submitted Ext.B1 report did not make head count of employees of canteen and therefore on the basis of the report it cannot be said that canteen is run as separate unit. More over the Employees Insurance Court found that the canteen does not employ ten or more employees. In

such circumstances. Canteen does not attract coverage under Section 2(12) of Employees State Insurance Act. No substantial question of law is involved in the appeal.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.